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John E. Benedict
Senior Counsel

6560 Rock Spring Drive
Bethesda, MD 20817
Telephone 301 214 3473
Fax 301 214 7145
Telex 197800
Internet jeb.benedict@comsat.com

January 9, 1998

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By Hand Delivery

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

96-45

Federal Communications Commission
Office of Secretary

Attn A. Richard Metzger, Chief
Common Carrier Bureau

Dear Ms. Salas:

On behalf of COMSAT Corporation, I enclose for filing an original and five copies of a Petition for Partial Waiver of the Universal Service Contribution Requirement contained in Section 54.703 of the Commission's Rules. We have been advised that no filing fee is associated with this petition.

Also enclosed is an additional copy. Please date-stamp it and return it to our messenger.

If there are any questions about our submission, please call me.

Sincerely,

John E. Benedict

Enclosures

cc: Mr. Richard Welch, Common Carrier Bureau
Ms. Valerie Yates, Common Carrier Bureau
Ms. Lisa Gelb, Universal Service Branch
Ms. Diane Law, Universal Service Branch
Ms. Sheryl Todd, Universal Service Branch

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
COMSAT CORPORATION)
) File No. CC-97-____
Petition for Partial Waiver of the)
Universal Service Contribution)
Requirement contained in Section)
54.703 of the Commission's Rules)

TO: The Common Carrier Bureau
Universal Service Branch

PETITION FOR PARTIAL WAIVER

The Commission has ordered any carrier that provides interstate service to contribute to the Universal Service funds based on both its interstate and international revenues. For COMSAT Corporation ("COMSAT"), this formula will yield a Universal Service tax bill that actually exceeds all of COMSAT's interstate revenues combined. The Commission surely did not intend this irrational and unjust result.

Accordingly, COMSAT respectfully petitions the Commission for a partial waiver of the Universal Service contribution requirement set forth in the Commission's Report and Order¹ and codified at 47 C.F.R. Section 54.703.

¹ Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 (rel. May 8, 1997) ("Universal Service Order"), consolidated appeals pending sub nom. *Texas Office of Public Utility Counsel v. FCC*, Civ. No. 97-60421 (5th Cir.).

COMSAT supports the principle of Universal Service and does not seek a waiver of the contribution requirement as to its actual, assessable interstate revenues.² COMSAT limits its request only to a waiver of Universal Service contribution on its international revenues.

BACKGROUND

Telecommunications carriers providing any interstate telecommunications services must contribute to the newly-created Universal Service funds beginning in 1998.³ U.S. carriers that provide only international service will be assessed nothing. Interstate carriers, however, will be assessed Universal Service contribution based on both their interstate and international revenues.⁴

The Commission intended broad coverage of interstate carriers' revenues in an attempt to ensure that the impact

² COMSAT reserves all rights to pursue its pending appeal of the Universal Service order.

³ The Commission will assess contributions on interstate and international end-user telecommunications revenues for the high cost and low income assistance programs, and on intrastate, interstate, and international revenues for the programs supporting schools, libraries, and rural health providers. Universal Service Order at paras. 831, 837. Carriers are expected to make their first payments to the funds in February 1998.

⁴ In addition, affiliates of an interstate carrier will also be assessed Universal Service contributions even if they themselves do not provide interstate telecommunications services.

of Universal Service contributions would be equitable, nondiscriminatory, and competitively neutral, as required by Congress.⁵ The impact of this mechanism on COMSAT, however, is uniquely none of these.⁶

DISCUSSION

Under Section 1.3 of its rules, the Commission may waive any provision of its rules or orders upon a showing of good cause.⁷ A petitioner need only demonstrate that special circumstances, on an individual basis, warrant deviation from the rules and that a waiver would better serve the public interest than the general rule.⁸ Indeed, the Commission's "discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an

⁵ 47 U.S.C. Section 254(d) (codifying Section 101(a) of the Telecommunications Act of 1996).

⁶ Although the Commission realized that "some providers of international services will be treated differently from others," it assumed that "any disparity among providers should be minimal, since most international revenues are today earned by carriers that also provide interstate services." Universal Service Order at para. 779.

⁷ 47 C.F.R. Section 1.3.

⁸ *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Waiver is appropriate where "strict compliance [would be] inconsistent with the public interest."); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

application for exemption based on special circumstances."⁹
The Commission therefore has an "obligation to seek out the
'public interest' in particular, individualized cases."¹⁰
COMSAT's unique situation clearly meets these requirements.

**COMSAT historically has been barred
from the domestic interstate market.**

COMSAT was created by an Act of Congress,¹¹ and through
its business units it serves as the U.S. Signatory to
INTELSAT and Inmarsat. Neither INTELSAT nor Inmarsat
facilities are routinely used to provide U.S. domestic
telecommunications services -- either intra- or interstate.

COMSAT is unlike any other carrier subject to the
Universal Service order. In fact, because of its unique
role, for years the Commission has consistently barred

⁹ *WAIT Radio v. FCC*, 418 F.2d at 1157, 1159 (noting also
the Commission "cannot realistically ignore [such]
considerations of hardship, equity, or more effective
implementation of overall policy").

¹⁰ *Id.* at 1157.

¹¹ Communications Satellite Act, 47 U.S.C. Sections 731,
et seq.

COMSAT from the interstate domestic market.¹² As COMSAT explained in the rulemaking proceeding, COMSAT does not participate in the interstate telecommunications services market to an extent sufficient to bring it within the purview of section 254 of the Communications Act.

The great majority of COMSAT's so-called "interstate" service revenues are for communications to and from a few offshore U.S. possessions, specifically Guam, American Samoa, Wake Island, and the Commonwealth of the Northern Mariana Islands. The Commission has authorized this service as incidental to COMSAT's role as Signatory to INTELSAT, and it is clearly international in character. The Commission allowed COMSAT to serve these remote U.S. points only because they otherwise were not generally covered by domestic satellites. Under the Commission's broad definition, however, this limited, international-type service renders COMSAT an "interstate" carrier for Universal Service tax liability.

¹² E.g., *Communications Satellite Corp.*, 6 FCC Rcd 2891 (1991); *AT&T*, 52 FCC2d 142 (1975); *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd 2429 (1996); *AMSC Subsidiary Corp.*, 11 FCC Rcd 6830 (1996); *Amendment to the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Services in the U.S.*, IB Docket No. 96-111 (1997).

The Commission has also authorized COMSAT to use its international space segment capacity domestically in a few other instances, but these are even more narrow exceptions. They include limited service after natural or human disasters,¹³ and special temporary authority -- on an individual basis -- to serve a relative handful of Inmarsat test and demonstration terminals in the U.S. These exceptions are generally temporary and provide no significant or reliable interstate revenue base. The Commission has, moreover, directed COMSAT to transition its limited domestic land mobile and domestic aeronautical traffic to American Mobile Satellite Corporation's U.S. MSS system once it became operational.¹⁴

Under these special circumstances, and given COMSAT's unique exclusion from the U.S. market, a partial waiver of Universal Service assessment is clearly warranted.

¹³ *American Mobile Satellite Corp.*, 7 FCC Rcd 942, 944 (1992), *recon. granted in part*, 8 FCC Rcd 6310 (1993) (authorizing service "during the aftermath of natural or human disasters such as earthquakes, volcano eruptions and forest fires, and where these stations are the only adequate means of meeting urgent communications requirements.").

¹⁴ *Id.* at 944; *Aeronautical Radio, Inc.*, 7 FCC Rcd 1006, 1008 (1992).

**COMSAT's Universal Service liability will
exceed its total interstate revenues.**

Absent a partial waiver, COMSAT's annual Universal Service tax will actually be *greater than all of its interstate revenues* combined. COMSAT's total 1997 interstate revenues were approximately \$3.8 million. COMSAT estimates that its 1998 Universal Service liability (which is expressly determined using 1997 revenues) will be nearly \$5 million.

This is a manifestly arbitrary and irrational result, plainly contrary to the intent of the statute or the Universal Service Order. Besides working an injustice on COMSAT, it discourages competition and destroys any business rationale to provide service to the isolated U.S. overseas points that create this liability. Clearly, COMSAT would not have sought authority to provide its limited interstate services if it had anticipated that they would generate liability exceeding their revenue.

COMSAT's revenues from definitionally "interstate" services total *less than one percent* of the company's annual revenues. Yet that small amount of business triggers Universal Service liability for the remaining ninety-nine-plus percent of COMSAT's business that is actually

international.¹⁵ Moreover, ironically, more than ninety percent of COMSAT's "interstate" revenue is itself exempt from assessment, because it is revenue received from other U.S. carrier-contributors.

When the Universal Service order was issued, Commissioner Chong recognized that taxing COMSAT's international revenues was inequitable and discriminatory and would harm its ability to compete against its foreign competitors:¹⁶

The inequity is particularly egregious in the case of a carrier such as Comsat that provides very little interstate service, but substantial international service. *Requiring Comsat to contribute to the universal service fund on the basis of its international revenues is truly a case of the tail wagging the dog.*

Unless a partial waiver is granted, COMSAT's multi-million dollar Universal Service bill will have a real, adverse impact on COMSAT's ability to compete -- far greater than the burden imposed on others. Unlike other carriers, virtually none of COMSAT's assessment can be recovered from

¹⁵ The Commission recently exempted from any Universal Service assessment broadcasters and systems integrators if they derive less than five percent of revenues from interstate telecommunications. Federal-State Joint Board on Universal Service, *Fourth Order on Reconsideration/Report and Order*, CC Docket 96-45 (rel. Dec. 30, 1997).

¹⁶ Universal Service Order, *Separate Statement of Commissioner Rachelle B. Chong, Concurring in Part Dissenting in Part*, at 3.

end-users or offset by reduced access charges. Most of COMSAT's assessment derives from operations that compete with foreign carriers that are entirely exempt from the contribution requirement.

For no other carrier does Universal Service contribution raise such a degree of unfairness or impose so disproportionate a burden.

**A partial waiver is in
the public interest.**

The public interest compels the partial waiver. Granting COMSAT's request will have an immaterial effect on Universal Service funding.¹⁷ At the same time, it will ensure that COMSAT can continue to provide service to its limited "interstate" customers, particularly on Guam, American Samoa, Wake Island, and the Northern Marianas. It will also ensure that COMSAT can continue to make disaster relief communications readily available and to allow U.S. manufacturers and users of Inmarsat equipment to test equipment under limited grants of special temporary authority -- services which benefit the public interest but provide COMSAT little financial benefit.

COMSAT is committed to these responsibilities and has no desire to abandon such needed services. Unless a waiver

¹⁷ COMSAT's contribution is about one-tenth of one percent of projected total collections.

is granted, however, the Universal Service order would create a tax bill that is greater than the combined interstate revenue that creates COMSAT's liability.

CONCLUSION

For the reasons set forth above, the Commission should grant COMSAT's petition for waiver and assess Universal Service contribution based only on COMSAT's actual, assessable interstate revenues.

Respectfully submitted,

COMSAT Corporation



Keith H. Fagan
Neal T. Kilminster
Robert A. Mansbach
John E. Benedict
Its Attorneys

COMSAT Corporation
6560 Rock Spring Drive
Bethesda, MD 20817
301-214-3000

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